

A. Lurr "Comedy
of Errors"

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QUEER "COMEDY OF ERRORS."

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Mr. Zachariah Montgomery, late an Assistant Attorney-General of the United States, has recently published a volume attacking the public school system, in which he reiterates and emphasizes the assertion of one published several years ago, that statistics show that, in the United States, the result of the public school system has been to enormously increase the criminal tendency. In proof of this—and the sole proof that is offered—he shows that, according to the census of 1860, there were in the six New England States, on the 30th of June, 1860, no less than 2,459 persons "imprisoned for crime"; while in six Southern States, to wit, Virginia, Delaware, Maryland, North Carolina, South Carolina and Georgia, there were on that day but 477 "in prison for crime." At that time the New England States had 2,665,945 native white inhabitants, and the six Southern States named had 3,181,969 native whites; so that the Northern group had one for every 1,064 of its native white population "in prison for crime," while the Southern group had only one for every 6,670 "in prison" for criminal offenses of every kind. It appears also from the same authority, that is, the census of 1860, that in the New England group only one out of every 312 of the native white adults were unable to read and write, while in the Southern group one out of every twelve white adults could not read or write.

Basing his argument on this statement of fact, Cardinal Manning, in the *Forum* for March, 1889, attacks the public school system as "tending inevitably to destroy all that is worth saving in American Christianity."

To this article Prof. G. P. Fisher, in the *Forum* for April, 1889, makes answer, that the disparity as to the number "in prison for crime" did not result from the superior intelligence of the New England group, but from peculiar conditions, affecting the Northern, but not the Southern, group of States, to wit: "(1) great manufacturing centers, (2) large cities, (3) an immense number of recently arrived immigrants." This answer is neither sufficient nor defensible. There were, it is true, no "great manufacturing centers"

in the Southern group in 1860; but there were nearly as many people living in "large cities" in those States as in New England. Instead of such an "immense number" of recently arrived immigrants, as Professor Fisher would seem to suppose, there were in all New England then only 458,330 persons of foreign birth, of all ages and nationalities, and two-fifths of these could not have contributed to the criminal population, because of non-age. All these differential conditions then put together are not sufficient to account for one-tenth of the disparity between the number "in prison for crime" in the two groups.

As if aware of the insufficiency of this answer, Professor Fisher calls upon Gen. Francis A. Walker, the superintendent of the census of 1860, to give a further explanation. General Walker, after broadly intimating that we had no statistics worth considering until he gave them to us, coolly affirms that the volume from which the figures are taken has no reliability, giving as a reason, that the inquiry was "not made by an expert," and that the results were compiled "by the clerk of the Land Office." Both these statements may be true, and yet the tables referred to may be—and as a matter of fact are—entirely reliable. There is not a scintilla of evidence, and no reasonable ground, for questioning their entire accuracy.

If, then, there were proportionately six times as many of the people of New England "in prison for crime" as in the contrasted Southern group on the day specified, how shall we avoid the conclusion that there was a great preponderance of crime in the more intelligent States? The explanation is simple and sufficient. It involves no impeachment of a public record, but only a knowledge of actual, known conditions. It is to be found in the criminal laws and penal institutions of the contrasted groups.

In the New England group, imprisonment was practically the only mode of punishment, except for a few of lesser offenses which might be expiated by fine. Even in these cases, if the convicted party were unable to pay a fine, imprisonment was the only alternative. In one of these States there were no capital crimes; and in the others, only the most deliberate and revolting forms of homicide received this penalty. Capital executions hardly

averaged one a year in each of these States, whose criminal tendencies, Cardinal Manning would have us believe, were so enormously developed by the public school system. All other forms of crime were punished by imprisonment, and a large proportion of the capital sentences were commuted to imprisonment for life. In each of these States there was at least one penitentiary, and in most of them workhouses, to which the less-abandoned criminals were sentenced. Imprisonment with or without hard labor was then, as now, almost the sole punishment known to the law alike for misdemeanors and felonies. The number "in prison for crime" in this group of States, therefore, represents the whole number who had been convicted of any serious offense in New England during the two years previous—that being somewhat less than the average penitentiary term—and also the convictions for less serious offenses during three months preceding, ninety days being the average term in reformatory and merely restrictive imprisonment.

Let us now see what the term "in prison for crime" represented under the penal laws and practices of the group of Southern States with which New England is compared. It must not be forgotten that this comparison is made on the 30th of June, 1860. At that time there was not a single penitentiary or State Prison in the whole group of Southern States named. They had no need for any. What imprisonment was to the penal system of New England, physical torture or mutilation of the criminal's person then was to the Southern system. In the first place, the list of capital felonies was astoundingly large—including murder, rape, arson, burglary, and, in some of the contraband States, inciting slaves to insurrection, highway robbery, and second or third convictions of some lesser offenses. In some of these States the list of capital offenses was thus made to include a dozen or more crimes.

After these came other forms of physical retribution. If the Southern group had no penitentiaries, the whipping-post and stocks stood in every court-house yard,

and an assortment of branding-irons was to be found in every sheriff's office. Upon the dockets of the criminal courts of these States, instead of finding the verdict of guilty accompanied with a sentence to imprisonment for a term of years, with or without hard labor, one would then find such minutes of judgment as these: "to receive twenty lashes on his bare back"; "to receive thirty-nine lashes well laid on"; "to receive one hundred lashes, twenty-five at a time, at intervals of twenty days"; "to be branded on the right cheek," or "in the palm of the right hand"; "to have his right ear cut off"; "to have both ears slit"; "to sit in the stocks a certain number of hours each day." These are actual entries from the dockets of 1860, of sentences of white men. Combinations of these were to be found in infinite variety. Imprisonment, as a sole punishment, was very rare; as an adjunct of another penalty, it was far from frequent, and then generally for very brief terms. There were no prisons, except the common jails of the counties, and these were by no means commodious, being intended more for debtors and those awaiting trial, than for those convicted of crime.

Instead of showing substantially the number of convictions for all serious offenses during two years previous, or during any period, in fact, it is not at all probable that "an exact enumeration" of those "in prison for crime" in the jails of the Southern group, would have represented one-tenth, perhaps not one-twentieth, of the actual convictions during a single year. One who will study the penal system of these States, and examine the judgments of their criminal courts, at any time previous to the introduction of imprisonment as the prevailing punishment in 1868, will assuredly wonder that there were so many of the limited class of offenders of whose punishment imprisonment was a part, to be found in the jails of those States. Considering these conditions, it is a much greater surprise to find that there were in the Southern group 477 in the brief category of criminals who might be "imprisoned for crime," than that there were in New England 2,459, of the whole convicted criminal class.

If one would realize how utterly absurd any deduction in regard to the criminal tendencies of these contrasted groups of States is, which is based on the number "in prison for crime," at any time previous to the period when the "carpet-bagger" and the "negro" debauched the civilization of the South by introducing penitentiaries and school houses, instead of the whipping-post and the branding-iron, let him fancy what a heaven of in-offensive morality New England would have seemed if the test had been reversed. Suppose the inquiry to have been, "How many were whipped at the whipping-post, in punishment for crime in the two contrasted groups, during the preceding twelve-month? How many were branded? How many were hanged?"

In the Southern group there were probably two thousand whipped for crime that year. This estimate is not altogether without substantial basis. I had the curiosity once to examine the dockets in a dozen counties in one of those States, to find how many were actually sentenced to be whipped during that very year of grace, 1860. These were quiet, peaceable counties; but if the average number who "kissed the widow"—as hugging the whipping-post is grimly termed—in those counties that year, be divided by two and multiplied by the number of counties in the Southern State group, the result would be much greater than the number stated. On the other hand, in all New England there was not one man whipped for crime during that year, or many years before. So, too, with the branding-iron and stocks, hundreds of cases in the Southern group; not one in the Northern. How many hanged? Probably fifty in the Southern group and five in the Northern one. What would these statistics prove? That in the Northern group there were no criminals? That universal intelligence eradicates crime? Certainly not; yet the principle is the same as in the statistics so boastfully paraded. The only difference is that in the Southern group a few—very few—crimes were punished by imprisonment; while in the North absolutely none were punished by whipping or branding, and but one capitally.

If these statistics—either the actual or supposed ones—prove anything in regard to the effect of general intelligence or overwhelming illiteracy, on crime or criminal jurisprudence, they show merely that, in 1860, a community having one illiterate out of every 812 of the native population, punished its criminals by restraining or imprisoning the body of the culprit; while in the contrasted group where there was one illiterate to every twelve of the adult white population, criminals were yet punished by mutilation and torture. Whether this proves ignorance to be the more desirable estate, or shows that the public school system is likely to destroy all that is good in American Christianity, depends simply on whether barbarism and cruelty are esteemed preferable to humanity. They certainly prove no more in regard to the prevalence of crime, the laxity of the laws, the lenity of the courts or the morals of the people in the two contrasted groups, than they do in regard to the atmospheric condition of the moon, or the habitability of the planet Jupiter.

Mayville, N. Y., June 12.